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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. ~~1-2388~~ 176

JENKINS BROS.,
Petitioner,

v.

LOCAL 5623, UNITED STEELWORKERS OF AMERICA, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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—and—

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United States Const., Amend. X 2

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

JENKINS BROS.,
Petitioner,
v.
LOCAL 5623, UNITED STEELWORKERS OF AMERICA, *et al.*,
Respondents.

No. ....

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Petitioner, Jenkins Bros., prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered in the above-entitled case on February 26, 1965.

Citations to Opinions Below

The opinion, and order of the District Court for the District of Connecticut, (Hon. William H. Timbers, U. S. D. J.) is printed in Appendix A hereto, infra, p. 1a, and is reported at 230 F. Supp. 871.

The opinion of the Court of Appeals is printed in Appendix B hereto, infra, p. 5a, and is unreported.

Jurisdiction

The judgment of the Court of Appeals was entered on February 26, 1965, Appendix C, infra, p. 7a. The juris-

diction of this Court is invoked under 28 U. S. C., Section 1254(1).

Question Presented

Where under state law any person in control of premises who knowingly permits the premises to be used for pool-selling and policy-playing is liable to criminal prosecution; and where an employee is arrested in the employer's plant for pool-selling and policy-playing in the plant, and pleads guilty to the charges; and where the employer discharges the employee forthwith; and where under the declared public policy of the State any arbitration award directing reinstatement of the employee would be void; should the employer be forced to participate in an arbitration proceeding wherein the employee's union demands his reinstatement? That is, in fashioning a federal labor law, may the courts overrule the announced public policy of a state?

STATUTES INVOLVED

United States Const., amend. X:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Section 301(a) of the Labor Management Relations Act, 61 Stat. 156 (1947), 29 U. S. C. § 185(a) (1958), provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as de-

fined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

Conn. Gen. Stats., (Rev. 1961) Section 53-295

"*Pool selling.* Any person, whether as principal, agent or servant, who owns, possesses, keeps, manages, maintains or occupies, or assists in keeping, managing, maintaining or occupying, any building, room, office, park, ground, enclosure or place with apparatus, books or boards or any device for the purpose of making, recording or registering bets or wagers, or of buying or selling pools upon the result of any trial or contest of skill, speed or endurance of man, beast, bird or machine, or upon the result of any game, competition, political nomination, appointment or election, whether such trial, contest, game, competition, nomination, appointment or election takes place either within or without this state, or where pool selling of any kind, either directly or indirectly, is permitted or carried on, or in which the business of transmitting money to any race track or other place there to be placed or bet on any horse race, game, sport, competition, nomination, appointment or election, whether within or without this state, is permitted or carried on in any manner, and any person who keeps a place which is reputed to be a place resorted to for the purpose of selling pools upon the result of any election, and any person who makes, records or registers any such wagers or bets, or buys or sells, or is concerned in buying or selling, any such pools, or

in carrying on the business of the transmission of money to any race track or other place there to be bet or placed on any horse race, game, sport, competition, nomination, appointment or election, whether within or without this state, *and any person who, being the owner, lessee or occupant of any building, room, park, ground, enclosure or place, or part thereof, knowingly permits the same to be used or occupied for any such purpose, on the first conviction shall be fined not more than five hundred dollars or be imprisoned not more than one year or be both fined and imprisoned . . .*" (emphasis supplied).

Conn. Gen. Stats., (Rev. 1961) Section 53-298

"*Policy playing; gaming by use of lottery slips* or *tickets.* Any person, whether a principal, agent or servant, who owns, possesses, keeps, manages or maintains, or assists in keeping, managing or maintaining, any policy-office or place where the game of chance, business, scheme or occupation, commonly known as policy, is, or is reputed to be, played or carried on, or any place where bets or wagers are, or are reputed to be, made upon the result of a drawing in any lottery, or of the drawing of any numbers by chance, or any place which is, or is reputed to be, resorted to for any such purposes in whole or in part, or writes, sells, bargains, exchanges, gives, transfers, delivers, buys, collects or receives, or is concerned in writing, selling, bargaining, exchanging, giving, transferring, delivering or receiving, any policy slips, tickets, tokens, numbers or chances, used in said game of chance, business, scheme or occupation, or in wagering or betting

upon the result of any drawing in any lottery, or in any drawing of any numbers by chance, or collects or receives, or is concerned in receiving or collecting, any money or other valuable thing for any such slips, tokens, numbers or chances, or plays or takes part in any way in such game of chance, business, scheme, occupation, betting or wagering, in or out of any such office or place, or frequents any place or office . . . which is, or is reputed to be, resorted to for any of such purposes in whole or in part, or makes, manufactures or keeps, or is the custodian of, any slips, tokens, papers, books, records or registers of bets or wagers, or any appliances or apparatus used for any such purposes, *and any owner, mortgagee in possession, lessee or occupant of any building, room, structure or place, or part thereof, who knowingly permits the same to be used or occupied for any of the purposes mentioned in this section, for a first offense, shall be fined not more than one hundred dollars or imprisoned not more than six months or both . . .*" (emphasis supplied)

Statement

Plaintiff is a New Jersey corporation doing business in the building which it owns at Bridgeport, Connecticut. Defendant union is an unincorporated labor organization located at Bridgeport. The plaintiff company and defendant union are parties to a collective bargaining agreement. In pertinent part the agreement provides for the arbitration of certain disputes arising thereunder between the parties. The Connecticut State Board of Mediation and Arbitration is a quasi-administrative body of the State of Connecticut located at Wethersfield, Connecticut. It is the arbitrator named in the collective bargaining agreement.

On October 7, 1963, Edward Saladak was an employee of the plaintiff, and a member of defendant union. On that day police officers entered plaintiff's plant and placed Saladak under surveillance. They then searched his person and his workbench. They found in his possession and control numerous policy slips and horse plays. He was arrested in the plaintiff's plant for violations of the Connecticut gambling laws, specifically Sections 53-295 and 53-298 of the Connecticut General Statutes.

Immediately after the arrest, plaintiff discharged Saladak. The discharge was necessitated by the provisions of the two criminal statutes that make it a crime for the person in control of premises knowingly to permit pool selling and policy play to be carried on the premises.

The defendant union filed grievance with the company on October 8, 1963, alleging that the discharge of Saladak was "unjust".

On October 17, 1963, Saladak pleaded guilty in the Connecticut Circuit Court for the Second Circuit to violations of Sections 53-295 and 53-298.

On December 12, 1963, the company received a letter from the Secretary of the Connecticut State Board of Mediation and Arbitration, notifying the company that the union had requested the board to arbitrate the discharge. The board thereafter scheduled an arbitration hearing for March 6, 1964.

However, under the declared public policy of Connecticut, any arbitration award directing reinstatement of an employee guilty of violating these gambling laws on the employer's premises would be void as contrary to public policy, even where the submission was unrestricted. *Avco Corporation* v. *Preteska,* 22 Conn. Supp. 475, 174 A. 2d 684 (Super. Ct. 1961).

Prior to the arbitration hearing, therefore, the plaintiff instituted an action in the Superior Court of the State of Connecticut for Fairfield County, at Bridgeport, against the union and the board to enjoin said defendants from proceeding with the arbitration hearing. Plaintiff's complaint was based on two grounds: (1) that the board should not proceed with such arbitration hearing since there was no agreement between union and plaintiff to arbitrate the discharge of Edward Saladak, and (2) that if the defendants were not enjoined from proceeding with the arbitration hearing, plaintiff would be forced to participate in an arbitration hearing held in contravention of the announced public policy of the State of Connecticut.

On March 2, 1964, as a result of a petition for removal filed by the union, plaintiff's action was removed to the United States District Court, District of Connecticut. Thereafter, both defendant union and defendant board filed motions to dismiss plaintiff's action. Plaintiff filed a motion to remand.

On April 24, 1964, the District Court (Honorable William H. Timbers U.S.D.J.) entered judgment granting defendant union's motion to dismiss and denying plaintiff's motion to remand (Appendix A). The motion to dismiss filed by defendant board was dismissed as moot, since the board had been dropped as a defendant as the result of a stipulation executed by the board and the plaintiff.

Plaintiff appealed the judgment.

The Court of Appeals for the Second Circuit affirmed the judgment below in a *per curiam* opinion (Appendix B) and entered judgment accordingly, on February 26, 1965 (Appendix C).

Reasons for Granting the Writ

1. The decision below conflicts in principle with decisions of this Court, the New York Court of Appeals, and the California Supreme Court.

In *Southern Steamship Co.* v. *NLRB,* 316 U. S. 31, this Court struck down a Labor Board order directing the reinstatement of seamen who went on strike on board ship in response to their emoplyer's unfair labor practices, because the strike also constituted mutiny within the meaning of the Criminal Code. The Court pointed out that "Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another . . ." Id., 47.

Earlier, in *NLRB* v. *Fansteel Corp.,* 306 U. S. 240, a Labor Board order for the reinstatement of unfair labor practice strikers was denied enforcement because the strikers had engaged in "unlawful conduct", a sit-down that constituted an illegal seizure of their employer's plant.

The highest courts of two states also have refused to enforce arbitration awards that ran counter to public policy. *Matter of Western Union Telegraph Co.,* 299 N. Y. 177, 86 N. E. 2d 162; *Black* v. *Cutter Laboratories,* 43 Cal. 2d 788, 278 P. 2d 905. The *Western Union* case involved employees who had illegally refused to handle telegraph messages from or to other companies at which a strike was in progress. The *Cutter Laboratories* case involved an employee discharged for Communist Party membership and activity that the California Supreme Court found was condemned by state public policy. This court dismissed certiorari, 351 U. S. 292.

The cases cited above proceeded upon the principle that legal process should not be used to compel or condone conduct that is criminal, illegal or that is contrary to public policy.

"Of course there *is* a public policy which condemns gambling by an employee on the premises of his employer; . . . ." *Local 453* v. *Otis Elevator Co.,* 314 F. 2d 25, 29 (2 Cir. 1963) (emphasis supplied)

Nevertheless, the decision below discounts what it calls "theories of state public policy or police power" in favor of "the clearly enunciated federal policy of enforcing arbitration provisions in union management contracts . . ." The decision below would compel the employer to enter into an arbitration which might well result in the reemployment of the employee discharged for criminal activity on the company premises. The court below seeks to justify this shocking result on the ground that "the question whether an award would be enforceable is one of federal law", without recognizing that "The power of the federal courts to enforce the terms of private agreements is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in the Constitution, treaties, federal statutes, and *applicable legal precedents*." *Hurd* v. *Hodge* 334 U. S. 24, 34. (emphasis supplied).

Here the "applicable legal precedent" which manifests the relevant public policy is *Avco Corporation* v. *Preteska, supra.* That case holds at p. 481 of 22 Conn. Supp. that in Connecticut, arbitration awards which compel the reinstatement of an employee guilty of gambling on the employer's premises are *void* as against the public policy of Connecticut.

This is because where public policy, as embodied in a statute, forbids the performance which is the subject of dispute, that policy and statute are as binding on arbitrators as on courts, *Exercycle Corp.* v. *Maratta,* 9 N. Y. 2d 329 at p. 335, 214 N. Y. S. 2d 353 at pp. 356-7.

2. The question presented is clearly important in the developing field of federal labor law. Perhaps the largest single category of labor arbitration cases is that involving issues of discharge and discipline. Whether, under the

usual form of arbitration agreement, the employer is obligated to arbitrate as a "labor dispute" an admitted violation of state criminal law in the plant, is therefore a practical and continuing problem. Not infrequently, the reason for discipline or discharge is illegal or criminal conduct on the part of the employee affected.[1] Recent arbitration awards indicate that in-plant gambling is not an uncommon form of such conduct.[2]

The question raised by the decision below is therefore likely to arise with some frequency in the future, and the way in which it is decided will undoubtedly affect the functioning of the labor arbitration system so strongly endorsed by this Court in the *Steelworkers* cases.

It is in the public interest to have that arbitration system function well, and in accommodation with the statutory schemes of law and order which lie at the foundations of society. Therefore it is in the public interest to have the important issues raised by the decision below authoritatively settled by this Court.

The rule that an employer must proceed to arbitration of any grievance is not absolute, *John Wiley & Sons* v. *David Livingston,* U. S. , 84 S. Ct. 909, 32 L. W. 4285. Certainly, an exception to the rule should be made when, as here, an employee is committing criminal acts on the company premises and is thereby exposing the employer himself to arrest and prosecution. "The strategy of discipline is not simple," *Southern Steamship* v. *NLRB,* 316 U. S. 31, 46. Plant discipline would be a mockery

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[1] E.g., *Mansfield Tire & Rubber Co.,* 31 L. A. 775; *Penn-Dixie Cement Corp.,* 29 L. A. 451; *Glasgow-Adrian Co.,* 25 L. A. 614; *Certain-Teed Products Corp.,* 24 L. A. 606; *Republic Steel Corp.,* 23 L. A. 808; *Sherwin-Williams Co.,* 22 L. A. 1; *Quaker Oats Co.,* 15 L. A. 42.

[2] *Lockheed Aircraft Corp.,* 37 L. A. 188; *Haskell Mfg. Co.,* 33 L. A. 174; *Publishers' Association of New York City,* 32 L. A. 44; *Advertiser Publishing Co.,* 32 L. A. 26; *Sun Drug Co.,* 31 L. A. 191.

if the employee were entitled to arbitrate his discharge under such circumstances.

3. The Court of Appeals has decided a federal question in a way in conflict with an analogous decision of this Court. This Court has recognized that an employee's violation of a state's criminal syndicalism statutes by Communist Party membership justifies the discharge of the employee under a "just cause" provision of the contract, so that an arbitration award directing reinstatement, which the state court declares contrary to state public policy, is unenforceable. *Black* v. *Cutter Laboratories,* 43 Cal. 2d 788, 278 P. 2d 905, cert. dismissed 351 U. S. 292 (1955). This Court there held that a state's construction of a local contract under local law is entitled to be honored, so that the contract could not be enforced to protect criminal activities "whether in the guise of unionism or otherwise" (p. 299).

We contend that the instant case also allows room for the play of state law and policy, even in the context of a federal labor law. This is so because "state law, if compatible with the purpose of § 301, may be resorted to in order to find the rule that will best effectuate the federal policy", *Textile Workers Union* v. *Lincoln Mills,* 353 U. S. 448, 457.

In the process, of course, the state law applied will become part of the fabric of federal law. Id. Thus, "the historic acceptance of concurrent state and federal jurisdiction of cases arising under federal law", *Chas. Dowd Box Co.* v. *Courtney,* 368 U. S. 502, 514, is given full play.

Here, the state's public policy is not a matter of conjecture, as it was to some degree in *Otis Elevator* v. *Local 453,* 314 F. 2d 25, cert. den. 373 U. S. 949. Connecticut's public policy is set forth explicitly in *Avco Corporation* v. *Preteska, supra.* There the Connecticut court declared that an arbitration award compelling reinstatement of an em-

ployee who had gambled on the employer's premises, is *void* as contrary to public policy.

The judicial inquiry herein must be strictly confined, under § 301 and the rule of *United Steelworkers* v. *Warrior & Gulf Navigation Co.*, 363 U. S. 574, 582, to one question: whether the company ever agreed or is obligated to arbitrate a grievance which might result in an order that it "must furnish both premises and opportunity to such employees to carry on gambling activities . . ." (*Avco Corporation* v. *Preteska*, 22 Conn. Supp. at 480).

To ask the question is to answer it.

4. This case presents a basic Constitutional question: Even in fashioning a federal labor law, may the courts disregard the announced public policy of a state?

True, the enforcement of arbitration provisions in collective bargaining agreements is now a matter of federal law, *Textile Workers Union* v. *Lincoln Mills*, 353 U. S. 448, 457. However, state courts have concurrent jurisdiction in such cases, *Charles Dowd Box Co.* v. *Courtney*, 368 U. S. 502, although they too must apply federal law, *Local 174, Teamsters* v. *Lucas Flour Co.*, 369 U. S. 95.

Whatever court assumes jurisdiction must use due discretion in pursuing the objectives of federal labor law. Frequently the entire scope of Congressional purpose calls for careful accommodation of one statutory scheme to another. *Southern Steamship Co.* v. *NLRB*, 316 U. S. 31, 47. Here, there was a state statutory scheme to prohibit pool selling and policy play, and to impose criminal sanctions on an occupier of property who knowingly permits such illegal activities in his plant.

We contend that the employer had certain "normal rights of redress" in this situation, which "in their most obvious scope, included the right to discharge the [wrong-

doer] from its employ", *NLRB* v. *Fansteel,* 306 U. S. 240, 254. In truth, the employer had only one possible course: to protect itself from possible prosecution and conviction under state law, to wit, by discharging the guilty employee.

It is not too much to demand of a federal court, seeking to fashion a federal labor law, that it undertake accommodation to the state criminal statutes without excessive emphasis upon its immediate task of fashioning the federal law. Cf. *Southern Steamship Co.* v. *NLRB,* supra, at p. 47. To require arbitration looking to the reinstatement of a confessed gambler in the employer's plant would subvert the "principles of law and order" which, this Court has pointed out, *NLRB* v. *Fansteel,* 306 U. S. 240, 253, "lie at the foundations of society."

A federal court fashioning a federal labor law must give due deference to such an important state policy, and not judicially erode the basic state right to preserve law and order, in contravention of the Tenth Amendment.

In a leading case in the area of labor relations, *Allen-Bradley Local 1111* v. *Wisconsin Employment Relations Board,* 315 U. S. 740, 749 the Court declared:

> ". . . [T]his Court has long insisted that an 'intention of Congress to exclude States from exerting their police power must be clearly manifested' . . ."

Surely the federal labor policy, which favors arbitration as the preferred method for settling labor disputes was not intended by Congress—and to date has not been so interpreted by this Court—to extend so far as to encroach upon a State's right to enact and administer its criminal laws under the proper exercise of its police power, guaranteed to the states by the Tenth Amendment.

Conclusion

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Dated: May 20, 1956

Respectfully submitted,

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—and—

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Bridgeport, Connecticut

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CUMMINGS & LOCKWOOD,
Of Counsel

APPENDIX A

Memorandum Order of the District Court for the District of Connecticut granting defendant union's motion to dismiss

MEMORANDUM ORDER ON

(1) PLAINTIFF'S MOTION TO REMAND;

(2) DEFENDANT UNION'S MOTION TO DISMISS OR FOR STAY; AND

(3) DEFENDANT'S BOARD'S MOTION TO DISMISS

Plaintiff having moved, pursuant to 28 U.S.C. § 1447, to remand this action to the Superior Court for Fairfield County, from which it was removed to this Court, pursuant to 28 U.S.C. § 1441, by defendant Local 5623, United Steelworkers of America (defendant Union); and

Defendant Union having moved, pursuant to Rule 12 (b)(6), Fed. R. Civ. P., to dismiss the action for failure to state a claim upon which relief can be granted, or, in the alternative, for a stay of proceedings in this action pending arbitration of the dispute in accordance with the collective bargaining agreement between plaintiff and defendant Union; and

Defendant The Connecticut State Board of Mediation and Arbitration (defendant Board) having moved, pursuant to Rule 12(b)(2), Fed, R. Civ. P, to dismiss the action for lack of jurisdiction over defendant Board; and

Plaintiff and defendant Board having stipulated that defendant Board be dropped as a defendant herein; and

The Court having heard argument by counsel for the respective parties; having considered their pleadings, motions, affidavits and briefs; and being of the opinion that

(A) Plaintiff's motion to remand the action should be denied for the reasons

(1) that, whether the complaint be construed as seeking an injunction to enjoin arbitration of a matter not arbitrable under the collective bargaining agreement or a declaratory judgment requesting protection against improper demands for arbitration, under controlling law the action is one over which this Court would have had original jurisdiction to determine the obligation of the parties to arbitrate a dispute under a collective bargaining agreement in an industry affecting commerce, pursuant to Section 301(a) of the Labor Management Relations Act, 29 U. S. C. § 185(a) (*Black-Clawson Co., Inc.* v. *International Association of Machinists,* 313 F. 2d 179, 181-2 (2 Cir. 1962); *Armstrong-Norwalk Rubber Corp.* v. *Local 283,* 167 F. Supp. 817, 818 (D. Conn. 1958); *cf. Local 453* v. *Otis Elevator Co.,* 314 F. 2d 25 (2 Cir.), *cert. denied,* 373 U. S. 949 (1963));

(2) that, since this is a civil action over which this Court would have had original jurisdiction (28 U. S. C. § 1331(a); 29 U. S. C. § 185(a)), the action therefore was properly removed to this Court (28 U. S. C. § 1441(a) and (b)); and

(B) Defendant Union's motion to dismiss the action should be granted for the reasons

(1) that an arbitration board, pursuant to a collective bargaining agreement, may arbitrate the question of just cause in the discharge of

an employee for violation of state gambling laws notwithstanding the existence of a public policy of the state against gambling (*Local 453* v. *Otis Elevator, supra* at 28-29, *reversing* 206 F. Supp. 853 (S. D. N. Y. 1962));

(2) that, assuming without holding that there is a public policy of the State of Connecticut which condemns gambling by an employee on the premises of his employer (*Avco Corporation* v. *Preteska,* 22 Conn. Supp. 475, 174 A. 2d 684 (Super. Ct. 1961)), such state public policy is not controlling over, but must yield to, the substantive principles of national labor law which the federal courts are empowered to fashion—in short, the public policy of the United States as declared by the federal courts in the field of national labor law must prevail over any state public policy asserted to the contrary (*Local 453* v. *Otis Elevator Co., supra* at 28-29; *cf. John Wiley & Sons, Inc.* v. *David Livingston,* 32 U. S. L. Week 4285, 4286 (U. S. March 30, 1964)); and

(C) Defendant Board's motion to dismiss the action should be denied as moot for the reason that said defendant by stipulation has been dropped as a defendant herein; it is

ORDERED that plaintiff's motion to remand the action be, and the same hereby is, denied; and it is further

Appendix A

ORDERED that defendant Union's motion to dismiss the action be, and the same hereby is, granted; and it is further

ORDERED that defendant Board's motion to dismiss the action be, and the same hereby is, denied as moot.

Dated at New Haven, Connecticut, this 24th day of April, 1964.

WILLIAM H. TIMBERS
William H. Timbers
United States District Judge

APPENDIX B

Opinion of the Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 254—September Term, 1964.

(Argued January 22, 1965 Decided February 26, 1965.)

Docket No. 29027

JENKINS BROS.,

Plaintiff-Appellant,

—v.—

LOCAL 5623, UNITED STEELWORKERS OF AMERICA, *et al.*,

Defendant-Appellee.

Before:

MOORE, FRIENDLY and MARSHALL,

Circuit Judges.

Appeal from a judgment of the United States District Court for the District of Connecticut, William H. Timbers, *Judge*, dismissing an action to enjoin arbitration of a grievance. Affirmed.

CLIFFORD R. OVIATT, JR., Stamford, Conn. (Morgan P. Ames, Stamford, Conn., on the brief) (John A. Sabanosh, Cummings & Lockwood, of counsel), *for Plaintiff-Appellant.*

DANIEL BAKER, Stamford, Conn. (Baker and Diamond, on the brief), *for Defendant-Appellee.*

Appendix B

PER CURIAM:

This appeal is another attempt to escape the clearly enunciated federal policy of enforcing arbitration provisions in union management contracts by seeking to interpose theories of state public policy or police power. Appellant, Jenkins Bros., sued the appellee union in the Superior Court of the State of Connecticut for Fairfield County seeking injunctive relief against the holding of an arbitration hearing on a grievance involving the discharge of an employee who had been convicted of violating the gambling laws of Connecticut. The proceeding was removed to the United States District Court of Connecticut where appellee union filed a motion to dismiss and appellant filed a motion to remand. The motion to remand was denied and appellee's motion to dismiss was granted.

Judge Timbers dismissed the action on the authority of our decision in *Local 453* v. *Otis Elevator Co.*, 314 F. 2d 25 (2 Cir.), *cert. denied*, 373 U. S. 949 (1963). Appellant seeks to distinguish *Otis* by relying upon a lower Connecticut court decision that an arbitration award would be contrary to Connecticut public policy. *Avco Corp.* v. *Preteska*, 22 Conn. Super. 475, 174 A. 2d 684 (1961). This argument completely ignores our holding in *Otis* that the question whether an award would be enforceable is one of federal law. *Textile Workers Union of America* v. *Lincoln Mills*, 353 U. S. 448 (1957).

We therefore affirm the judgment below.

APPENDIX C

Judgment of the Court of Appeals for the Second Circuit

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-sixth day of February, one thousand nine hundred and sixty-five.

Present:

HON. LEONARD P. MOORE,
HON. HENRY J. FRIENDLY,
HON. THURGOOD MARSHALL,
Circuit Judges.

JENKINS BROS.,
Plaintiff-Appellant,

v.

LOCAL 5623, UNITED STEELWORKERS OF AMERICA,
Defendant-Appellee.

Appeal from the United States District Court for the District of Connecticut.

Appendix C

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed.

A. DANIEL FUSARO
Clerk